

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 MCALLEN DIVISION

4 UNITED STATES OF AMERICA § CASE NO. 7:19-CR-600-1  
5 VERSUS § MCALLEN, TEXAS  
6 GERARDO TAFOLLA § MONDAY,  
§ APRIL 8, 2019  
§ 9:00 A.M. TO 9:45 A.M.

7  
8 ARRAIGNMENT  
(PARTIAL - EXCLUDES SEALED PORTION)

9 BEFORE THE HONORABLE MICAELA ALVAREZ  
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES: SEE NEXT PAGE

12 COURT RECORDER: XAVIER AVALOS  
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ALSO ATTENDING:

US PROBATION OFFICE  
Braulio Carvaján

1           MCALLEN, TEXAS; MONDAY, APRIL 8, 2019; 9:00 A.M.

2           THE COURT: This is Case No. 19-600, the  
3 United States versus Gerardo Tafolla.

4           MR. LOPEZ: Good morning, Your Honor.

5           Bob Lopez, on behalf of the Government, and  
6 Peter Nothstein from the Department of Justice.

7           THE COURT: Thank you.

8           MR. NOTHSTEIN: Good morning, Your Honor.

9           THE COURT: Good morning.

10          MS. GARZA: Good morning, Your Honor.

11          Alma Garza for Mr. Gerardo Tafolla. Judge, he's  
12 present and ready.

13          THE COURT: Okay. And I understand he is ready to  
14 enter a plea to the Information; is that correct?

15          MR. LOPEZ: That's correct, Your Honor.

16          MS. GARZA: That's correct, Your Honor.

17          THE COURT: Okay. Thank you.

18          And Mr. Tafolla, I understand that you are going  
19 to be entering a plea to the Information here so I'm going  
20 to go through a lot to cover with you so I'm going to begin  
21 by asking you to raise your right hand to be sworn in.

22          (Defendant sworn.)

23          THE COURT: All right. Just let -- first of all,  
24 I'll give you some brief instructions, Mr. Tafolla. It is  
25 important that you understand everything that I cover with

1 you. If you do not, please make sure to let me know. It  
2 doesn't matter how simple the question is, if you need me to  
3 repeat it, let me know. More than anything else, once we  
4 conclude this hearing, it is very difficult to come back  
5 claiming you did not understand what was covered with you  
6 here today.

7 Do you understand that?

8 DEFENDANT TAFOLLA: Yes, Judge.

9 THE COURT: All right. Let me get a little bit of  
10 background information from you.

11 First of all, how old are you?

12 DEFENDANT TAFOLLA: Fifty-two.

13 THE COURT: What kind of schooling do you have?

14 DEFENDANT TAFOLLA: High school, went to Pan Am  
15 and some college, got about 91 hours total.

16 THE COURT: Okay. Are you now under the influence  
17 of any alcohol, drugs or medication?

18 DEFENDANT TAFOLLA: No, Judge.

19 THE COURT: Within the last 48 hours, have you  
20 taken any alcohol, drugs or medication?

21 DEFENDANT TAFOLLA: No, Judge.

22 THE COURT: Have you ever been under the care of  
23 any doctor, psychologist, psychiatrist, any kind of mental  
24 health professional for any mental health issues?

25 DEFENDANT TAFOLLA: No.

1           THE COURT: I know that this Information was just  
2 very recently filed.

3           Have you had enough time to talk with your  
4 attorney about the charge that you are facing?

5           DEFENDANT TAFOLLA: Yes, Judge.

6           THE COURT: Okay. Let me go through that charge  
7 with you. I'm going to read first of all to you the  
8 Information itself and then I'm going to explain it to you  
9 in more basic terms.

10           So the Information charges that from at least in  
11 or about August 2011 through at least October 2014, in the  
12 Southern District of Texas and elsewhere within the  
13 jurisdiction of the Court, that you being an agent of a  
14 local government, namely, a commissioner for the City of  
15 Weslaco, a local government that received benefits and  
16 access of \$10,000 pursuant to a federal program involving a  
17 grant contract subsidy, loan guarantee and other form of  
18 federal assistance in each year from 2011 through 2014, that  
19 you did corruptly solicit, demand, accept and agree to  
20 accept a thing of value, that is, United States currency  
21 from a person intending to be influenced and rewarded in  
22 connection with a business, transaction and series of  
23 transactions of the City of Weslaco, Texas valued at 5,000  
24 or more, that is, the contracts for construction and  
25 rehabilitation of water treatment facilities in the City of

1 Weslaco, Texas, in violation of Title 18, United States  
2 Code, Section 66(a)(1)(B).

3 So there's a lot there, Mr. Tafolla, but let me  
4 sort of break it down into the stated parts.

5 So first of all, for this kind of charge, the  
6 Government would have to prove that during this time in  
7 question that you were the agent of a local government here,  
8 that is, a commissioner.

9 Also, that the local government here, the City of  
10 Weslaco, was a government that received from the Federal  
11 Government some sort of financial assistance either by  
12 grant, contracts or some other arrangement that was in at  
13 least the amount of -- or in more than the amount of \$10,000  
14 per year. And here that is from 2011 to 2014.

15 That you then -- do you have a question there? I  
16 may have misspoken but 2011 to 2014.

17 Was there a question?

18 DEFENDANT TAFOLLA: I thought you said every year.

19 MS. GARZA: He thought you said that he received  
20 \$10,000 every year.

21 THE COURT: No, the Government itself.

22 DEFENDANT TAFOLLA: Okay.

23 THE COURT: So you were an agent of the  
24 Government, that is, you were a commissioner. The  
25 Government, who was the City of Weslaco, and the Government

1 received, that is, the City of Weslaco received more than  
2 \$10,000 a year, okay?

3 DEFENDANT TAFOLLA: Okay.

4 THE COURT: So that's the first two parts. Okay.

5 The next part is that you corruptly solicited,  
6 that is, basically tried to get somebody to give you, that  
7 you demanded, that you accepted or agreed to accept  
8 something of value from somebody else. So to "corruptly  
9 demand or solicit" basically means to do it intentionally  
10 with some unlawful purpose, that it was in done with the  
11 intent to be influenced and that the value was 5,000 or  
12 more.

13 Do you understand the charge here?

14 DEFENDANT TAFOLLA: Yes.

15 THE COURT: Do you have any questions whatsoever  
16 about the charge?

17 DEFENDANT TAFOLLA: No, Judge.

18 THE COURT: Very good. There are some things I  
19 need to cover with you regarding this charge, Mr. Tafolla,  
20 because this is what we call a "Criminal Information." And  
21 I think Ms. Garza was showing you the actual Information  
22 there itself. Okay. So that Criminal Information in this  
23 case, if you look at the third page there, it's signed by  
24 the United -- the Assistant United States Attorney here and  
25 also from, I guess, a second attorney here.

1           And so this is the Criminal Information. This is  
2 the charge itself, but because this is a felony offense, you  
3 have the right to be charged by what we call an  
4 "Indictment." An Indictment is different from this because  
5 this is just signed by the attorneys, not -- it has not gone  
6 through the Grand Jury system. So let me explain to you in  
7 basic terms the Grand Jury system and you may know some of  
8 this already, but it's important that you understand this.

9           The Grand Jury are citizens of this community, at  
10 least 16. They are -- have to charge an Indictment. And  
11 basically what happens is that the Government will present  
12 to that Grand Jury information, evidence, testimony,  
13 whatever they think they should present to that Grand Jury  
14 and then the Grand Jury is the one that decides whether you  
15 will be indicted. So it's sort of like a screening process.  
16 Somebody other than the Government is looking at it.

17           If the Grand Jury decides to issue an Indictment,  
18 you are charged and it could be exactly like this except  
19 that it's gone through the Grand Jury system. This one has  
20 not gone through the Grand Jury. You do have the right when  
21 you are being charged with a felony to have it go through  
22 the Grand Jury.

23           Do you understand that first of all?

24           DEFENDANT TAFOLLA: Yes, Judge.

25           THE COURT: Now in this case because -- I've been



1 advised that you are ready to enter a plea here, that means  
2 that you are not going through the Grand Jury system.

3 Do you also understand that?

4 DEFENDANT TAFOLLA: Yes, Judge.

5 THE COURT: Okay. And so the question then,  
6 Mr. Tafolla, is: do you wish to waive your right to have  
7 this charge go through the Grand Jury system?

8 DEFENDANT TAFOLLA: Yes.

9 THE COURT: Do you want to give that up?

10 DEFENDANT TAFOLLA: Yes.

11 THE COURT: And you want to go forward here with  
12 these -- with the Information?

13 DEFENDANT TAFOLLA: Yes.

14 THE COURT: Okay. So the next thing to explain to  
15 you about this Information, Mr. Tafolla, is that it was just  
16 filed, I guess, about a week ago, more or less. Even though  
17 you're going to enter a plea here, this is like a trial and  
18 that I will decide whether you are guilty. In a few  
19 moments, I'll explain to you some more of those rights, but  
20 it's important that you understand that this is like a trial  
21 in that regard.

22 You have the right to have at least 30 days to  
23 prepare for a trial. And obviously, here this was filed on  
24 the 1st so it has not been 30 days. So if you go forward  
25 here today, you would also be giving up your right to have

1 at least 30 days to prepare for a trial.

2 So first of all, do you understand that you do  
3 have the right to have at least 30 days to prepare for  
4 trial?

5 DEFENDANT TAFOLLA: Yes.

6 THE COURT: And do you wish to go forward here  
7 today with a plea and give up that right to have 30 days to  
8 prepare for trial?

9 DEFENDANT TAFOLLA: Yes.

10 THE COURT: All right. And again, Mr. Tafolla, if  
11 there's any hesitation on any of this, this is the time to  
12 tell me. And you've worked out whatever agreement you've  
13 worked out with the Government. That's strictly between you  
14 and the Government. But if there is any hesitation as to  
15 anything that you are doing here right now and answer to my  
16 questions, this is the time to tell me because, as I said,  
17 once you go through with a plea, it is just very hard to  
18 come back and convince me that I should let you withdraw  
19 that plea.

20 Do you understand that?

21 DEFENDANT TAFOLLA: Yes, Judge.

22 THE COURT: Okay. Any questions so far, any  
23 hesitation so far?

24 DEFENDANT TAFOLLA: No, ma'am.

25 THE COURT: Okay. So let me touch then on a few

1 other things with you, Mr. Tafolla, as far as the rights  
2 that you do have. To begin with, you do have the right to  
3 be represented by an attorney throughout this case, as you  
4 are being represented here today, and you have the right  
5 even if you cannot afford an attorney.

6 Do you understand that?

7 DEFENDANT TAFOLLA: Yes, Judge.

8 THE COURT: In this case, Ms. Garza, you were  
9 retained or --

10 MS. GARZA: That's correct, Your Honor.

11 THE COURT: Okay. In fact, if your ability to  
12 hire a lawyer changes at any point in time, Mr. Tafolla, you  
13 could always advise the Court and we will appoint an  
14 attorney to represent you.

15 Do you understand that?

16 DEFENDANT TAFOLLA: Yes, Judge.

17 THE COURT: Okay. You also have the right to  
18 enter a plea of not guilty to the charge. And if you wish  
19 to enter a plea of not guilty, then the case and because  
20 this is an information probably would go back to the Grand  
21 Jury system for an Indictment, but nonetheless you would  
22 have the right to have a jury trial. The Jury is made up of  
23 12 citizens of this community and the Jury is the one that  
24 would decide whether you are guilty or not guilty.

25 You would also have the right to have the

1 witnesses presented, that is, whatever witnesses the  
2 Government has to testify against you, to have those  
3 witnesses presented to the -- give their testimony to the  
4 Jury. You would have the right through your attorney to ask  
5 questions of those witnesses, that is, to cross-examine  
6 those witnesses.

7           You would also have the right to present witnesses  
8 of your own and to compel them, to make them be present to  
9 testify even if they did not want to testify.

10           And you would have the right to testify as well,  
11 if you wanted to testify. If you chose not to testify, the  
12 Jury would not consider that as evidence that you are guilty  
13 or evidence of anything else. In other words, you wouldn't  
14 be found guilty just because you chose not to testify in  
15 front of the Jury. These are rights that you have, if you  
16 wish to go forward with a plea of not guilty.

17           Do you understand this?

18           DEFENDANT TAFOLLA: Yes, Judge.

19           THE COURT: Now if you do enter a plea of guilty,  
20 you are giving up your right to have a jury trial. You are  
21 giving up your right to have the witnesses presented, both  
22 yours and the Government's except for yourself. You'll  
23 becoming witness in the case because the Government's  
24 attorney will tell me the facts of your case, I will ask you  
25 questions about those facts and you will have to answer

1 those questions for me.

2 Now I know you've been answering questions for me  
3 already but those are very different questions because those  
4 are questions going to your rights in this case. Now when  
5 I'm talking about you becoming a witness in your own case is  
6 because I will ask you about the actual events that happened  
7 here and you will have to answer those for me so you do give  
8 up your right to remain silent.

9 Do you understand this?

10 DEFENDANT TAFOLLA: Yes, Judge.

11 THE COURT: With that understanding then, do you  
12 want to give up your right to have a jury trial, your right  
13 to have the witnesses presented, both yours and the  
14 Government's, and your right to remain silent?

15 Do you want to give up those rights by entering a  
16 plea of guilty?

17 DEFENDANT TAFOLLA: Yes, Judge.

18 THE COURT: Have you spoken with your attorney  
19 about what you may be facing by way of punishment if you are  
20 found guilty in this case?

21 DEFENDANT TAFOLLA: Yes.

22 THE COURT: Okay. There's hesitation there and I  
23 probably think I know why you're hesitating so let me touch  
24 on that first and then if --

25 DEFENDANT TAFOLLA: Sure.

1 THE COURT: -- that's not the reason, I'll come  
2 back to it because likely Ms. Garza did not tell you how  
3 much time you actually get.

4 DEFENDANT TAFOLLA: No, Judge.

5 THE COURT: Hopefully, she did tell you what the  
6 maximum amount of time that you are facing is.

7 Is that your hesitation?

8 DEFENDANT TAFOLLA: That's correct.

9 THE COURT: And that's because she can't tell you  
10 how much time you will actually get. She can tell you what  
11 the law is and I -- in a moment I'll ask about the  
12 Guidelines to see if she covered that with you as well.  
13 But I am the one that decides your actual sentence and even  
14 I can't tell you right now how much time you will actually  
15 get.

16 What I will do is cover with you -- and probably  
17 hopefully the same thing Ms. Garza covered with you -- what  
18 the law provides here. The law for this charge provides  
19 that you can receive a sentence of up to 10 years of prison  
20 time. There's no minimum amount of prison time required,  
21 but it can be up to 10 years.

22 The law also provides that you can be placed on  
23 what we call "supervised release" for up to three years. So  
24 let me touch on what we call "supervised release" a little  
25 bit more. Basically supervised release is a period of time

1 if you are -- prison time. It is after you have completed  
2 your prison time, you are out under court supervision. You  
3 are ordered to do or not do certain things and any violation  
4 of supervised release could result in you having to serve  
5 more time in prison for this offense. You would have to  
6 come back to court. I wouldn't just automatically send you  
7 to prison, but you would have to come back to court  
8 depending on the particular circumstances. I could decide  
9 to revoke your supervised release, that is, to take you back  
10 into custody and order you to serve some more prison time.

11 Do you understand that?

12 DEFENDANT TAFOLLA: Yes.

13 THE COURT: Okay. And I didn't ask this earlier  
14 but, Mr. Tafolla, are you citizen of the United States?

15 DEFENDANT TAFOLLA: Yes.

16 THE COURT: All right. Now in addition then to  
17 the up to 10 years of prison time, the up to three years of  
18 supervised release, the law also provides that you can be  
19 ordered to pay a fine of up to \$250,000 depending on whether  
20 you can afford to pay.

21 The law requires you be ordered to pay \$100 even  
22 you cannot afford to do so.

23 Do you also understand this?

24 DEFENDANT TAFOLLA: Yes, Judge.

25 THE COURT: And then in this Information, you have

1 also been given what we call "Notice of Forfeiture."  
2 "Forfeiture" is basically the term that's used for when the  
3 Government seeks to take title to and possession of property  
4 that somebody else may have an interest in.

5 In this case, the Government has let you know that  
6 it is going to seek forfeiture of at least of \$20,000 in  
7 US currency, that is, in money, and is going to also seek a  
8 money judgment to that effect so let me touch up on those a  
9 little bit. Obviously the forfeiture of \$20,000 is not  
10 necessarily a hard thing to understand. It's pretty basic.  
11 But the money judgment may be a little bit different from  
12 what many people think of this kind of case.

13 Basically what that is, is that it will -- the  
14 Government will be asking me, as part of this criminal case,  
15 to enter a judgment by which you owe to the Government  
16 \$20,000. That would be -- and sometimes people understand  
17 that in the civil context where you get sued and the Jury or  
18 the Judge says you have to pay \$20,000, it would be the same  
19 kind of money judgment where the Government has a judgment  
20 against you for \$20,000.

21 Now the Government is also letting you know that  
22 if they're not able to get the \$20,000, that they can then  
23 seek to collect that through forfeiture of any property of  
24 whatever sort that is not exempt. There are some certain  
25 protections, but it would be anything that's not exempt



1 here. So that is as to forfeiture.

2 Now you do have certain rights when the Government  
3 is seeking to take your property. Those rights can be  
4 asserted through this criminal case or it can be asserted  
5 separately through what we call an "administrative  
6 proceeding," that is, you can go in and assert that the  
7 Government has no right to take these things.

8 Do you understand this part first?

9 DEFENDANT TAFOLLA: Yes, Judge.

10 THE COURT: Okay. And is there a separate issue  
11 as to forfeiture in this case, Mr. Lopez?

12 MR. LOPEZ: There's not a separate issue --

13 THE COURT: I mean, I'm sorry, as to restitution.

14 MR. LOPEZ: Restitution, Your Honor, I believe  
15 would, it is our opinion there's going to come a time we  
16 would ask the Court to set the amount of restitution, Your  
17 Honor, --

18 THE COURT: Okay so.

19 MR. LOPEZ: -- being for City of Weslaco. But,  
20 Your Honor, we do not have a finite number set at this point  
21 in time.

22 THE COURT: At this point. Okay. So the other  
23 thing that is maybe a consequence here, Mr. Tafolla, is what  
24 we call "forfeiture." Excuse me, I keep saying "forfeiture"  
25 -- restitution. Restitution is a little bit different from

1 forfeiture. Restitution is basically where you can be  
2 ordered to make whole the City of Weslaco for their losses  
3 as to the events that happened here.

4 Now there are I understand other individuals  
5 involved in all of this. When we are looking at restitution  
6 when there are more than one person involved in that, each  
7 one of those can be ordered to pay the whole amount of  
8 restitution. Even though it may be four people paying the  
9 whole amount in this case, the City would never get four  
10 times what they lost. But amongst all four of them, they  
11 can each be ordered to pay the full amount depending on the  
12 particular circumstances. And then once the City is paid in  
13 whole even if it's only from one person, then the other  
14 people sort of fight it out amongst themselves, okay?

15 But this is a case where, at some point in time,  
16 the question of restitution will be addressed by the Court,  
17 by me. Therefore, you can also then be ordered to pay, as I  
18 said, to the City of Weslaco the monies that they lost as a  
19 result of the criminal activities here.

20 Do you understand this also?

21 DEFENDANT TAFOLLA: Yes, Judge.

22 THE COURT: Okay. So I've covered with you then  
23 sort of the consequences of entering a plea and being found  
24 guilty to this charge.

25 The other thing I touched on a few moments ago is

1 what we call the "Guidelines." The Guidelines are a way  
2 that we come up with a range of months that the Court should  
3 consider in deciding what sentence you should receive. We  
4 use a chart that looks like this, (indicating).

5 Did you talk with your attorney about the  
6 Guidelines?

7 DEFENDANT TAFOLLA: Yes.

8 THE COURT: Okay. And again, the Guidelines,  
9 Mr. Tafolla, as I said are a way that we come up with a  
10 range of months that I should consider in deciding your  
11 actual sentence. There's two things that are important for  
12 you to understand. One is that the Guidelines are advisory,  
13 that is, I have to consider the Guidelines. I do not have  
14 to follow the Guidelines. And we take information -- for  
15 the Guidelines, we take information about the offense  
16 itself. Here I just -- and I didn't go back and look at  
17 them, but I suspect that the primary factor that will decide  
18 where you fall in the Guidelines is the amount of money  
19 involved in this case.

20 I didn't ask, but I kind of would suspect that if  
21 you have a criminal history, it's probably very minor. But  
22 we take information about the offense and we take  
23 information about your criminal history and with that  
24 information we come up with what we call your "guideline  
25 range."

1           At the time of sentencing, I consider that in  
2 deciding your actual sentence. I consider anything else  
3 that is presented to me about yourself, your background,  
4 your family, your employment, your education, all of that I  
5 consider. I consider any other information presented to me.  
6 In this case when we have, the City of Weslaco involved, I  
7 can consider information presented to me in that regards to  
8 the harm there.

9           I also consider the law that applies to sentencing  
10 then I decide what sentence you should receive. That  
11 sentence can be within your guideline range whatever that  
12 turns out to be. It could less than that or it could be  
13 more than that provided I do not sentence you to more than  
14 the maximum, the 10 years that applies to this case.

15           So do you understand then as to the Guidelines, I  
16 have to consider them but I do not have to follow them?

17           Do you understand that?

18           DEFENDANT TAFOLLA: Yes, Judge.

19           THE COURT: Okay. The other important thing,  
20 Mr. Tafolla, for you understand about the Guidelines is that  
21 while I expect Ms. Garza to have given you a guideline range  
22 that she believes will apply to your case, that is not a  
23 promise or a guarantee. I'm the one that decides what the  
24 correct guideline range is. I do not do that until the time  
25 of sentencing. So whatever she may have told you that she

1 believes will be your guideline range, it could turn out to  
2 be different at the time of sentencing.

3 Do you also understand this?

4 DEFENDANT TAFOLLA: Yes, Judge.

5 THE COURT: Do you have any questions,  
6 Mr. Tafolla, whatsoever?

7 DEFENDANT TAFOLLA: No questions, Judge.

8 THE COURT: You've understood everything I've  
9 covered with you?

10 DEFENDANT TAFOLLA: Yes, I have.

11 THE COURT: Okay. Any hesitation that you have?

12 DEFENDANT TAFOLLA: No, Judge.

13 THE COURT: All right. Is there a Plea Agreement  
14 as to Mr. Tafolla?

15 MR. LOPEZ: Yes, Your Honor. It reads in  
16 pertinent part the Defendant agrees to plead guilty to  
17 Count 1 of the Information pursuant to Title 18, United  
18 States Code, Section 3663(a)(3).

19 The Defendant agrees and stipulates that at least  
20 \$20,000 represents the proceeds that the Defendant obtained  
21 directly or indirectly as a result of his participation in  
22 the charged violation and that the factual basis for his  
23 guilty plea supports the forfeiture of \$20,000.

24 The Defendant agrees to forfeit any of the  
25 Defendant's property in substitution up to a total

1 forfeiture of \$20,000.

2 And further, the Defendant agrees to the  
3 imposition of a personal money judgment up to that amount.

4 And the Defendant agrees to make a complete  
5 financial disclosure by truthfully executing a sworn  
6 financial statement within 14 days and by authorizing the  
7 release of all financial information requested by the United  
8 States.

9 The Defendant agrees to authorize a release of all  
10 financial information requested by the United States and to  
11 take all steps necessary to pass clear title to forfeitable  
12 assets to the United States and to fully assist in the  
13 collection of restitution and fine including but not limited  
14 to surrendering title, executing warranty deeds, signing  
15 consent decrees, and signing any other documents to  
16 effectuate the transfer of any assets.

17 In exchange, the Government will recommend that  
18 the offense level decrease by two levels, pursuant to United  
19 States Sentencing Guidelines, Section 3E1.1(a) if the  
20 Defendant clearly demonstrates acceptance of responsibility.

21 THE COURT: Mr. Tafolla, the Government has just  
22 indicated that you have signed a Plea Agreement with the  
23 Government. I believe Ms. Garza has that there.

24 Can you confirm for me that you did, in fact, sign  
25 that Plea Agreement?

1           DEFENDANT TAFOLLA: Yes, I did, Your Honor.

2           THE COURT: And did you review that with your  
3 attorney before you signed it?

4           DEFENDANT TAFOLLA: Yes.

5           THE COURT: Okay. Ms. Garza, if you would hand  
6 that over?

7           The Government has read through the Plea  
8 Agreement. I'm going to sort of restate what the Government  
9 just covered, Mr. Tafolla, is that basically that in  
10 exchange for your plea of guilty to the Criminal  
11 Information, you also agree that \$20,000 is at least the  
12 amount that you received in connection with the criminal  
13 activity here, that you agree to forfeit that amount and to  
14 basically provide to the Government the information, as  
15 Mr. Lopez read through here, to assist them in the  
16 collection of that amount. So basically you are giving up  
17 any rights that you may have here to claim to that amount of  
18 money.

19           The Government will then recommend two points off  
20 for what we call "acceptance of responsibility" on the  
21 Guidelines that I talked about.

22           Do you understand that that is the agreement that  
23 you have with the Government?

24           DEFENDANT TAFOLLA: Yes.

25           THE COURT: It's important, Mr. Tafolla, that you

1 understand that this Agreement between you and the  
2 Government is only between you and the Government. It is  
3 not an agreement with the Court. By that I mean that if you  
4 do enter a plea of guilty and I find you guilty, your case  
5 will be set for sentencing.

6 At the time of sentencing, I will consider the  
7 recommendation made to me by the Government, but I do not  
8 have to follow that recommendation. And even if I do not  
9 follow that recommendation, I do not have to allow you to  
10 withdraw your plea of guilty.

11 Do you understand this?

12 DEFENDANT TAFOLLA: Yes, Judge.

13 THE COURT: Okay. Other than the Agreement as set  
14 out here, Mr. Tafolla, do you believe that there has been  
15 any other promise of any sort made to you by anybody whether  
16 it be the Government, your attorney or anybody else to get  
17 you to plead guilty?

18 DEFENDANT TAFOLLA: No, Judge.

19 THE COURT: Has anybody threatened you or tried to  
20 force you or coerce you into entering a plea of guilty?

21 DEFENDANT TAFOLLA: No, Judge.

22 THE COURT: Do you wish to enter a plea of guilty  
23 freely and voluntarily?

24 DEFENDANT TAFOLLA: Yes, ma'am.

25 THE COURT: And do you wish to do so because you



1 are, in fact, guilty as charged in the Criminal Information?

2 DEFENDANT TAFOLLA: Yes, ma'am.

3 THE COURT: Any questions, Mr. Tafolla, anything  
4 else that you want me to explain to you in any more detail  
5 or any questions that you may have?

6 DEFENDANT TAFOLLA: No, Judge.

7 THE COURT: Very well. Mr. Tafolla, then how do  
8 you plead to this Criminal Information, guilty or not  
9 guilty?

10 DEFENDANT TAFOLLA: Guilty.

11 THE COURT: Okay. The next part now is where the  
12 Government will tell me the facts. Mr. Tafolla, listen  
13 carefully. Once I hear from the Government, I will ask you  
14 a few questions.

15 MR. LOPEZ: Yes, Your Honor.

16 Defendant Gerardo Tafolla is a resident of  
17 Weslaco, Texas and an elected member of the Weslaco City  
18 Commission since 2009.

19 Ricardo Quintanilla is a businessman who lived and  
20 worked in Weslaco, Texas.

21 Leonel Julian Lopez, Jr. is a resident of Starr  
22 County, Texas.

23 Company A is an international engineering and  
24 construction company that performed large-scale  
25 infrastructure projects for public and private clients.

1           Company B is an engineering company based in  
2 San Antonio, Texas. Person B is the owner of Company B.

3           Company C is an engineering company based in  
4 McAllen, Texas.

5           At all relevant times, the City of Weslaco was a  
6 political subdivision within the State of Texas. Weslaco is  
7 governed by a local government, which is a charter of the  
8 City of Weslaco.

9           At all relevant times and during each of the  
10 one-year periods beginning at least by 2011 and continuing  
11 at least through 2016, Weslaco received benefits in excess  
12 of \$10,000 under a federal program involving a grant  
13 contract subsidy loan guarantee insurance or other form of  
14 federal assistance.

15           The Texas Constitution and the laws of the State  
16 of Texas under the charter of the City of Weslaco  
17 established ethical standards of conduct for elected public  
18 officials including the Weslaco City Commissioners. These  
19 standards included an oath to faithfully execute the duties  
20 of the office of the Commissioner and to preserve, protect  
21 and defend the Constitution and laws of the United States  
22 and the State of Texas. Accordingly, Weslaco City  
23 Commissioners owed a fiduciary duty to the City of Weslaco,  
24 the Weslaco City Commission and the people of the City of  
25 Weslaco.

1           As an official in the City Government, Tafolla  
2       owed a fiduciary duty to the City of Weslaco and to its  
3       citizens to perform the duties and responsibilities of his  
4       office free from corrupt influence. As an elected official  
5       in the State of Texas, Tafolla swore to uphold the United  
6       States Constitution, the Texas Constitution and the laws of  
7       the State of Texas and faithfully execute the duties of his  
8       office.

9           In or about 2004, the Texas Commission on  
10      Environmental Quality, TCEQ, notified the City of Weslaco  
11      that its Pharr treatment facilities were in violation of the  
12      Texas environmental regulations. The City's water treatment  
13      facilities included the Water Treatment Plant, the "WTP,"  
14      which process the City's potable water and the North  
15      Wastewater Treatment Plant, the "NWWTP," and the South  
16      Wastewater Treatment Plant, the "SWWTP."

17           In or about 2007, the Commission voted to issue  
18      approximately 28 million in municipal bonds to finance  
19      several infrastructure projects in the Weslaco area. The  
20      two largest and costliest projects to be paid for by the  
21      bond funds were to rebuild the NWWTP and to perform repairs  
22      to the WTP.

23           In or about 2008, the Commission hired Company A  
24      to act as the construction manager for the infrastructure  
25      project to be funded by the bond issuance. Under the

1 Contract, Company A would effectively select the companies  
2 to perform the infrastructure work to be paid for with the  
3 bond fund.

4 Starting in or about August 2011 and continuing  
5 through in or about December 2016 in the Southern District  
6 of Texas and elsewhere, the Defendant, Gerardo Tafolla,  
7 agreed that Lopez would accept bribe payments from Company  
8 A, B and Company C. Lopez then made payments to Quintanilla  
9 via personal check. Quintanilla then cashed those checks  
10 and shared some of the cash with Tafolla.

11 From in or about December 15th, 2011 to in or  
12 about October 22nd, 2014, Lopez wrote approximately 41  
13 checks drawn on Lone Star National Bank accounts ending in  
14 9303, 5069 and 9214 to Ricardo Quintanilla in the amount of  
15 approximately \$500 to approximately \$5,000 each for a total  
16 of \$85,950 so that Ricardo Quintanilla could make bribe  
17 payments to Tafolla. Ricardo Quintanilla converted these  
18 checks to cash at a Lone Star National Bank branch and  
19 shared the cash with Tafolla.

20 During the relevant time period, the Defendant  
21 received at least \$20,000 in bribe payments to be used for  
22 his own personal benefit.

23 In exchange for the bribe payments, Tafolla agreed  
24 to and did use his official position as a Weslaco city  
25 commissioner to take official acts to benefit and help

1 Company A, Company B and Company C obtain millions of  
2 dollars in contracts from the City of Weslaco. For example,  
3 Tafolla took the following official acts in furtherance of  
4 the bribery scheme.

5 On or about August 16th, 2011, Tafolla voted to  
6 declare that the WTC was exceeding capacity and failing to  
7 meet public water demand thereby creating an imminent threat  
8 to public health and safety. This declaration allowed the  
9 Commission to bypass ordinary bidding and qualification  
10 procedures to move forward with the construction to address  
11 violations issued by the TCEQ.

12 On or about December 8th, 2011, Tafolla voted in  
13 favor of a motion for the City Manager to negotiate a  
14 contract with Company B for the design and expansion to the  
15 WTP and associated projects.

16 On or about September 8th, 2011, Tafolla voted to  
17 authorize the City Manager to negotiate a preconstruction  
18 services contract with Company A for the WTP.

19 On or about October 6th, 2011, Tafolla voted to  
20 approve a professional services agreement with Company B for  
21 the design of the WTP and a professional services agreement  
22 with Company A for the preconstruction services for the WTP.

23 On or about March 27th, 2012, Tafolla voted to  
24 authorize the Mayor to execute a contract valued at  
25 approximately 38.5 million with Company A for the expansion

1 of the WTP and to authorize city staff to amend the city  
2 budget to accommodate the 38.5 million Contract with  
3 Company A.

4 On or about June 5th, 2012, Tafolla voted to  
5 approve the City of Weslaco's entering into a professional  
6 services agreement with Company C.

7 On or about July 16th, 2013, Tafolla voted to  
8 amend the City's Contract with Company B to authorize  
9 Company B to prepare a preliminary engineering report for  
10 repairs to the SWWTP.

11 In or about 2016, Lopez and Ricardo Quintanilla  
12 and their co-conspirators provided Tafolla with questions to  
13 ask of other city official which were intended to benefit  
14 Company B during a dispute between the City of Weslaco and  
15 Company B over the City of Weslaco's refusal to pay  
16 Company B's invoices for the WTP.

17 Ricardo Quintanilla and Lopez and Tafolla and  
18 their coconspirators used wire communications in interstate  
19 commerce such as mobile messaging applications, email and  
20 interstate bank transfers in furtherance of the scheme to  
21 defraud.

22 THE COURT: Mr. Tafolla, do you agree with what  
23 the Government stated? And if you're not -- Mr. Tafolla,  
24 I'm sorry, this is the part where if you don't agree, this  
25 is the time to tell me and --

1           DEFENDANT TAFOLLA: I --

2           THE COURT: I can't -- I need to hear from you,  
3 Mr. Tafolla. If you don't agree with something, this is the  
4 time to tell me.

5           DEFENDANT TAFOLLA: It's basically towards the  
6 end.

7           THE COURT: Okay.

8           DEFENDANT TAFOLLA: I didn't go to any other  
9 commissioners and discuss any of this.

10          THE COURT: Okay. So the part -- and I think I  
11 know because I was watching you. And so the last part where  
12 he said that in 2016, Lopez, Quintanilla and the companies  
13 provided you with questions to ask of the City  
14 Commissioners.

15          That's the part that you don't agree with?

16          DEFENDANT TAFOLLA: Right, because I --

17          THE COURT: Okay. We'll come to that part in just  
18 a moment.

19          DEFENDANT TAFOLLA: Okay.

20          THE COURT: Okay. Everything else that the  
21 Government stated, do you agree with that?

22          DEFENDANT TAFOLLA: Yes.

23          THE COURT: Okay. So I need to cover with you  
24 some certain basics and then at the end, we'll get to that  
25 last part.

1           So first of all, you do admit that you were a city  
2 commissioner during this period of time; is that correct?

3           DEFENDANT TAFOLLA: Yes.

4           THE COURT: And no question but that the City  
5 itself is a local government and does receive -- Ms. Garza,  
6 no question as far as a receipt of \$10,000 during that --  
7 during any one-year period; is that correct also?

8           Do you agree with that, Mr. Tafolla?

9           DEFENDANT TAFOLLA: Yes.

10          THE COURT: Okay. And then you do admit,  
11 Mr. Tafolla, that during this period of time beginning more  
12 or less in 2011 and continuing through -- we'll cover the  
13 2016 part in a moment, but continuing at least into 2014 and  
14 the last date specifically was 2013, but continuing into  
15 about the end of 2013, early 2014 that you were unlawfully  
16 receiving these monies from -- it was going from Lopez to  
17 Quintanilla to you; is that correct?

18          DEFENDANT TAFOLLA: Yes, Judge.

19          THE COURT: Okay. And that you received at least  
20 \$20,000 in monies during this period of time; is that also  
21 correct?

22          DEFENDANT TAFOLLA: Approximately, yes.

23          THE COURT: Okay. And then the Government laid  
24 out some specific dates, beginning more or less August of  
25 2011 and the Government read several dates.



1           Excluding right now the 2016 date that they  
2 referenced, you do admit that during this period of time you  
3 took actions as a city commissioner that were favorable to  
4 Company A, B and/or C; is that also correct?

5           DEFENDANT TAFOLLA: Yes.

6           THE COURT: Okay. And that you were doing that,  
7 at least in part -- and again, Mr. Tafolla, maybe that some  
8 of this you thought really benefitted the City, but you were  
9 doing this at least in part as a sort of receipt for the  
10 monies that you had received or were receiving; is that also  
11 correct?

12          DEFENDANT TAFOLLA: Yes, Judge.

13          THE COURT: Okay. Now the last part, the way the  
14 Government said it was that -- not that you necessarily went  
15 to the Commissioners to ask these questions, but that you  
16 received from Lopez, Quintanilla the questions that they  
17 wanted you to ask of the Commissioners as it related to that  
18 issue that was going on at the time.

19           Do you admit that you at least received the  
20 questions?

21          DEFENDANT TAFOLLA: I can't recall what questions  
22 you're talking about.

23          THE COURT: Okay. All I'm going by is what the  
24 Government says and so --

25          DEFENDANT TAFOLLA: Okay.

1 THE COURT: -- I don't have the questions here.  
2 But the Government said that you -- that Quintanilla and  
3 Lopez basically told you "Find out from the Commissioners  
4 this," and I don't know the questions because I only heard  
5 with the Government said. And it's not whether you actually  
6 went to the Commissioners to ask the questions, but they  
7 were wanting you to get -- gather some information from the  
8 other Commissioners as to that particular issue.

9 Do you agree with that or not?

10 MR. LOPEZ: Your Honor, if I may?

11 THE COURT: Uh-huh.

12 MR. LOPEZ: It may help refresh some memory.  
13 There were messages that were sent to the Defendant during  
14 the course of the City of Weslaco's litigation with Company  
15 B and they had proposed certain questions of the Defendant  
16 to ask during -- either city officials or during the course  
17 of council meetings, Your Honor. The Government is not  
18 saying --

19 THE COURT: And the questions were sent via what?

20 MR. LOPEZ: Text messages, Your Honor.

21 THE COURT: Text messages. Okay.

22 DEFENDANT TAFOLLA: Okay.

23 MR. LOPEZ: And we're not saying the questions  
24 were actually asked, but that they were, as the Court noted,  
25 provided to the Defendant.

1 MS. GARZA: He remembers.

2 DEFENDANT TAFOLLA: I do remember.

3 MS. GARZA: Yes, you may.

4 DEFENDANT TAFOLLA: Can I say?

5 THE COURT: Yes, sir.

6 DEFENDANT TAFOLLA: What I do remember is that  
7 they called me just to try and get payments and I would go  
8 to the engineer or the City Manager and, you know, just tell  
9 him, you know, "Have you paid these people?" That was it.

10 THE COURT: So they were sending you or calling  
11 you and basically asking you to sort of --

12 DEFENDANT TAFOLLA: Maybe twice, maybe three  
13 times.

14 THE COURT: Okay. Asking you to sort of find out  
15 what was going on.

16 DEFENDANT TAFOLLA: Yes, because at that time, the  
17 City Manager was withholding all this --

18 THE COURT: Okay.

19 DEFENDANT TAFOLLA: -- because they knew there was  
20 something wrong.

21 THE COURT: Okay.

22 DEFENDANT TAFOLLA: And I thought everything was  
23 already -- the project was already built and it was ready to  
24 go.

25 THE COURT: And they were wanting you to basically

1 to sort of act on their behalf to find out what was going on  
2 about these payments?

3 DEFENDANT TAFOLLA: Not to find out, but just so  
4 they -- just for them to get paid.

5 THE COURT: Okay.

6 DEFENDANT TAFOLLA: That's the only thing, I mean,  
7 "Just tell them that we need to get paid because we haven't  
8 gotten paid." That was the extent.

9 THE COURT: That was -- okay. Now --

10 MR. LOPEZ: Judge, there's one more thing I wanted  
11 to clear up on the Record. When we're talking about the  
12 payments or at least when the Court was talking about the  
13 payments with the Defendant, the Court mentioned the  
14 payments in late 2013 and beginning into early 2014. We  
15 actually have payments that continued on up until  
16 October 22nd, 2014 --

17 THE COURT: All right. Okay. Well --

18 MR. LOPEZ: -- and we just wanted that to be clear  
19 on the Record.

20 THE COURT: And, I'm sorry, I may have misstated,  
21 but basically I was referencing the votes where the last  
22 date you gave for a vote was 2013.

23 MR. LOPEZ: Yes.

24 THE COURT: So the votes were at least to July of  
25 2013. The payments continued thereafter.

1 MR. LOPEZ: Yes.

2 THE COURT: Do you agree with that, Mr. Tafolla?

3 DEFENDANT TAFOLLA: Yes.

4 THE COURT: Okay. And these -- I think some of  
5 them happened via -- as far as the sort of communications  
6 here, some of them happened via telephone, text messages;  
7 do you agree with that?

8 DEFENDANT TAFOLLA: Yes.

9 THE COURT: Okay. And even though on your part,  
10 you were receiving the money, not necessarily through a  
11 bank. There's no dispute here that the money was going  
12 through a bank. Mr. Lopez writing checks on Lone Star.  
13 Mr. Quintanilla cashing those checks at a bank.

14 Do you agree with that as well?

15 DEFENDANT TAFOLLA: Yes.

16 THE COURT: All right. Mr. Tafolla, the Court  
17 does find that you are competent to enter a plea;

18 That you understand the nature of the charges  
19 against you, as well as the consequences of entering a plea;

20 That you are entering a plea of guilty freely and  
21 voluntarily;

22 And that there is a factual basis for the plea of  
23 guilty.

24 The Court does find you guilty as charged in the  
25 Criminal Information.

1           Your case will be set for sentencing on July the  
2 10th, at 2:00 p.m. A presentence investigation to be done  
3 on May the 13th. Objections to be filed by the 28th with a  
4 final report due on June 11th.

5           Now the next question here is the issue of bond  
6 since this has not been addressed whatsoever, correct?

7           MR. LOPEZ: Yeah, that's correct, Your Honor.

8           THE COURT: Okay.

9           MS. GARZA: Yes, Your Honor. I also a waiver of  
10 Indictment.

11          THE COURT: Oh, the waiver I do need please.

12          And has it been executed?

13          MS. GARZA: No, Judge, and we --

14          THE COURT: Okay. Since I've covered that orally  
15 with him, then -- Mr. Tafolla, I do want to make sure you've  
16 read through that, but if you are ready to sign it, you can  
17 go ahead and sign it.

18          (Pause in the proceedings.)

19          MR. LOPEZ: Judge, there was one matter that we'd  
20 like to take up at the Bench just to --

21          THE COURT: Okay. Just give me a moment. Let  
22 him --

23          (Pause in the proceedings.)

24          THE COURT: Okay. On the bond issue, what I would  
25 like to do is send you over to whoever's on duty.

1           Who's on duty today?

2           THE CLERK: Judge Hacker.

3           THE COURT: Judge Hacker? I'm going to send you  
4 over to Judge Hacker. I know that you're set up to -- but I  
5 don't anticipate that there would be any problem with  
6 Mr. Tafolla being out on bond.

7           MR. LOPEZ: Your Honor, may we approach on that  
8 issue as well?

9           THE COURT: You may, yes. Okay.

10          (Sealed Bench Conference held from 9:41 a.m. to  
11 9:45 a.m.)

12          THE COURT: Other than getting the hearing date  
13 for the bond hearing, is there anything else at this point  
14 in time as to Mr. Tafolla?

15          MR. LOPEZ: Nothing from the Government.

16          MS. GARZA: No, Your Honor.

17          THE COURT: Okay. All right. Then, Ms. Garza,  
18 Mr. Tafolla, and Mr. Lopez, if you will wait, Ms. Sanchez  
19 will communicate with them and see what would be a good time  
20 for this afternoon and then come up here with --

21          MS. GARZA: Thank you, Your Honor.

22          DEFENDANT TAFOLLA: Thank you, Your Honor.

23          THE COURT: Thank you. Then as to this matter, we  
24 are concluded.

25          THE CLERK: All rise.

1 (Hearing adjourned at 9:45 a.m.)

2 \* \* \* \* \*

3 I certify that the foregoing is a correct  
4 transcript to the best of my ability produced from the  
5 electronic sound recording of the proceedings in the above-  
6 entitled matter.

7 /S/ MARY D. HENRY

8 CERTIFIED BY THE AMERICAN ASSOCIATION OF  
9 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337  
10 JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
11 JTT TRANSCRIPT #60195  
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